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U.S. NEWS

SEC Clashes With Congress

By BRODY MULLINS And ANDREW ACKERMAN

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WASHINGTON—The Securities and Exchange Commission went to federal court Friday seeking to enforce subpoenas it issued to Congress, a move that sparks a high-stakes power struggle between two branches of government in a possible insider-trading case.

The SEC filed a lawsuit in the Southern District of New York seeking to compel the House Ways and Means Committee and a top House health-care aide to turn over documents and information in the case.

In its court filing, the SEC said the health-care aide "may have been" the source for the information at the heart of its long-running insider-trading investigation.

In response to the filing, the court asked lawyers for the House and the congressional health-care aide, Brian Sutter, and lawyers for the U.S. House to explain to the court why they refused to comply with the subpoenas. U.S. District Judge Paul Gardephe ordered representatives of the House committee and Mr. Sutter to respond by June 26 and to appear at a July 1 hearing on the matter.

In court filings, the SEC said the committee and Mr. Sutter have refused to comply with the subpoenas, arguing they were "repugnant to public policy," vague and overly broad. According to the SEC, the House lawyers also argued that constitutional protections allow them to ignore the SEC requests.

The SEC responded in court by saying that those "objections lack merit, and the subpoenas satisfy all the requirements for enforcement."

In a statement, the House Office of General Counsel said that SEC subpoenas "run seriously afoul of the Constitution's Speech or Debate Clause, and we expect to respond in due course on that ground, among others."

Under the separation of powers provisions in the U.S. Constitution, Congress has several legal protections from unwarranted investigations by the SEC and other executive-branch agencies.

"It's not unheard of for an agency to serve a subpoena to Congress, but for an agency to sue is—if not unprecedented—at least very rare," said Michael Stern, who was senior counsel to the U.S. House from 1996 to 2004.

At issue is an SEC investigation into whether insider-trading laws were broken in April 2013, when news of a significant change in health-care policy reached Wall Street traders before it was officially announced by the government.

According to a series of articles by The Wall Street Journal, health-care lobbyist Mark Hayes sent an email predicting the change to a Washington-based investment-research firm shortly before the announcement on April 1, 2013.

The policy change, which was made by the Centers for Medicare and Medicaid Services, was announced after markets closed that day. Mr. Hayes said in his email that he got the information from "credible sources," according to emails reviewed by the Journal.

The investment-research firm, in turn, relayed the prediction to its Wall Street clients in the final minutes before trading closed, prompting share prices of major health-insurance firms to jump as much as 6% in a few minutes.

In the court filing Friday, the SEC alleged for the first time that a senior health-care aide in the House was communicating with Mr. Hayes at about the same time that Mr. Hayes sent his email to the investment-research firm.

According to the SEC, Mr. Hayes and Mr. Sutter were allegedly communicating over email about an unrelated matter and then spent three minutes talking on the telephone. It is unclear what the two discussed on the phone.

About 10 minutes after the phone conversation, the SEC alleged, Mr. Hayes sent his email predicting the policy change to the investment research firm.

The SEC said its investigation "indicated that Sutter may have been a source of [Mr. Hayes's] nonpublic information."

The Journal reported this past week that Mr. Sutter was issued a subpoena by the SEC for documents and testimony in the matter. Mr. Sutter also received a subpoena in a criminal case to appear before a federal grand jury in the Southern District of New York.

The SEC issued a separate subpoena to the House Ways and Means Committee, where Mr. Sutter works as its top health-care aide.

A spokesman for the committee referred questions to the House legal counsel. Mr. Sutter didn't respond to a request for comment. The SEC declined to comment on its lawsuit. A lawyer for Mr. Hayes didn't respond to a request for comment.

The investigation by the SEC and federal prosecutors could represent the first insider trading case since Congress approved legislation in 2012 that was designed to prevent lawmakers and congressional aides from making stock trades based on information they learn during their jobs.

The legislation also made it easier for law-enforcement officials to pursue insider trading cases involving public officials illegally "tipping off" traders to coming policy changes that will affect stock prices.

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